3-16-2010

Hoskins v. State Appellant's Reply Brief Dckt. 36337

IN THE SUPREME COURT OF THE STATE OF IDAHO

TERRY HOSKINS,	)	
	)	
Petitioner-Appellant,	)	NO. 36337
	)	
v.	)	
	)	
STATE OF IDAHO,	)	REPLY BRIEF
	)	
Respondent.	)	
	)	

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

HONORABLE DARREN B. SIMPSON
District Judge

MOLLY J. HUSKEY
State Appellate Public Defender
State of Idaho
I.S.B. # 4843

SARA B. THOMAS
Chief, Appellate Unit
I.S.B. # 5867

ERIK R. LEHTINEN
Deputy State Appellate Public Defender
I.S.B. # 6247
3647 Lake Harbor Lane
Boise, Idaho 83703
(208) 334-2712

ATTORNEYS FOR
DEFENDANT-APPELLANT

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEY FOR
PLAINTIFF-RESPONDENT

TABLE OF CONTENTS

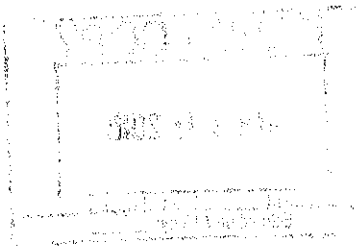

TABLE OF AUTHORITIES

Cases

STATEMENT OF THE CASE

Nature of the Case

On a spring day in 2007, Terry Hoskins was fixing his truck, which was parked on his property, when a couple of police officers came to arrest him on two misdemeanor warrants. The officers had Mr. Hoskins exit his truck and they handcuffed him. As one of the officers handcuffed Mr. Hoskins and walked him around to the front of his house, where a patrol car was waiting, the other officer began searching Mr. Hoskins' truck. That officer found a spoon containing methamphetamine residue under one of the passenger seats of Mr. Hoskins' truck. Mr. Hoskins was charged with possession of a controlled substance; he pled guilty; and he received a seven-year prison sentence. Mr. Hoskins did not file a direct appeal.

In late 2008, Mr. Hoskins filed a petition for post-conviction relief. His primary contention was that he had received ineffective assistance of counsel from his defense attorney insofar as his attorney failed to seek suppression of the spoon and the methamphetamine. In response, the State moved for summary dismissal, arguing that, because any suppression motion that could have been filed would have been denied (because, according to the State, the officer's search of Mr. Hoskins' truck was a valid search incident to arrest pursuant to *New York v. Belton*, 453 U.S. 454 (1981) and its Idaho progeny), Mr. Hoskins' counsel cannot be said to have rendered deficient performance in failing to file a suppression motion and, besides, Mr. Hoskins could not have been prejudiced by his counsel's failure to file a suppression motion. The district court agreed with the State's argument and summarily dismissed Mr. Hoskins' petition.

Mr. Hoskins timely appealed the district court's summary dismissal order. On appeal, Mr. Hoskins contends that he raised one or more genuine issues of material fact

concerning both his counsel's deficient performance in failing to file a suppression motion, and the prejudice he has suffered thereby, because, under *Arizona v. Gant*, __ U.S. __, 129 S. Ct. 1710 (2009), had a suppression motion been filed, it would have been, or at least should have been, granted. Accordingly, he asserts that the district court erred in summarily dismissing his petition.

In response, the State presents a single argument—that "[g]iven the state of the law in both Idaho and the U.S. at the time of Hoskins' arrest, a motion to suppress in this case would have been denied and Hoskins' counsel was not deficient for failing to pursue it." (Respondent's Brief, p.9.)

The present Reply Brief is necessary to point out that the State's legal argument is flatly incorrect.

Statement of the Facts and Course of Proceedings

The factual and procedural histories of this case were previously articulated in Mr. Hoskins's Appellant's Brief and, therefore, are not repeated herein.

ISSUE

Did the district court err in summarily dismissing Mr. Hoskins' petition for post-conviction relief?

ARGUMENT

The District Court Erred In Summarily Dismissing Mr. Hoskins' Petition For Post-Conviction Relief

In its Respondent's Brief, the State makes a single argument for affirming the district court's order summarily dismissing Mr. Hoskins' petition for post-conviction relief—it argues that the law regarding searches incident to arrest changed with the United States Supreme Court's decision in *Arizona v. Gant*, __. U.S. __, 129 S. Ct. 1710, 1716 (2009), and that Mr. Hoskins' case should be evaluated under the law that existed when his criminal case was pending (in 2007). (Respondent's Brief, pp.7-9.) As quoted above, the State claims that "[g]iven the state of the law in both Idaho and the U.S. at the time of Hoskins' arrest, *a motion to suppress in this case would have been* denied and Hoskins' counsel was not deficient for failing to pursue it." (Respondent's Brief, p.9.)

There might be some merit to the State's argument, had *Gant* actually changed the law concerning searches incident to arrest; however, it did not. As was discussed in some detail in Mr. Hoskins' Appellants' Brief, in *Gant*, the Supreme Court took great pains to point out that it was not overruling *New York v. Belton*, 453 U.S. 454 (1981); it clearly stated that it was simply giving *Belton* an interpretation that was more faithful to *Belton's* original rationale than that which had been ascribed to it by many courts (including the Idaho courts) during the previous 25+ years. (Appellant's Brief, pp.24-25.) In other words, according to the *Gant* Court, the Fourth Amendment has always meant what the *Gant* Court said it means in 2009. Thus, the *Gant* Court clearly did not change the law in any way.

Moreover, insofar as the Idaho courts have historically interpreted *Belton* incorrectly, that is of no consequence to the present case because it is the United States Supreme Court that is the ultimate arbiter of the meaning of the Fourth Amendment.

> Article VI of the Constitution makes the Constitution the "supreme Law of the Land." In 1803, Chief Justice Marshall, speaking for a unanimous Court, referring to the Constitution as "the fundamental and paramount law of the nation," declared in the notable case of *Marbury v. Madison*, 1 Cranch 137, 177, 2 L. Ed. 60, that "It is emphatically the province and duty of the judicial department to say what the law is." This decision declared the basic principle that *the federal judiciary is supreme in the exposition of the law of the Constitution*, and that principle has ever since been respected by this Court and the Country as a permanent and indispensable feature of constitutional system.

Cooper v. Aaron, 358 U.S. 1, 18 (1958) (making it clear that state officials in Arkansas were not free to disregard the United States Supreme Court's interpretation and application of the Fourteenth Amendment in *Brown v. Board of Education*, 347 U.S. 483 (1955)) (emphasis added). Thus, while the Idaho courts may very well have incorrectly denied relief had Mr. Hoskins' counsel filed a suppression motion in Mr. Hoskins' criminal case back in 2007, *see State v. Nickel*, 134 Idaho 610, 613-14, 7 P.3d 219, 222-23 (2000), that possibility cannot now be used as an excuse to deny post-conviction relief; the reality is that, had a suppression motion been filed in 2007, relief *should have* been granted, because that relief was required by the Fourth Amendment and *Belton*.

In light of the foregoing, it should be clear that the State's arguments are completely lacking in merit, and that, because Mr. Hoskins' counsel should have filed a suppression motion, and his failure to do so prejudiced Mr. Hoskins, the district court erred in summarily dismissing Mr. Hoskins' petition for post-conviction relief.

CONCLUSION

For the foregoing reasons, as well as those set forth in his Appellant's Brief, Mr. Hoskins respectfully requests that this Court vacate the district court order summarily dismissing his petition for post-conviction relief, and that it remand his case for an evidentiary hearing on his claim that his defense attorney was ineffective for failing to file a suppression motion on his behalf.

DATED this 15th day of March, 2010.

ERIK R. LEHTINEN
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 15th day of March, 2010, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

TERRY HOSKINS
INMATE #53122
ICC
PO BOX 70010
BOISE ID 83707

DARREN B SIMPSON
DISTRICT COURT JUDGE
E-MAILED COPY OF BRIEF

THOMAS W PACKER
ATTORNEY AT LAW
E-MAILED COPY OF BRIEF

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
P.O. BOX 83720
BOISE, ID 83720-0010
Hand deliver to Attorney General's mailbox at Supreme Court

EVAN A. SMITH
Administrative Assistant

ERL/eas